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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/641,410	08/18/2000	Alice Mary O'Donnell-Kiely		7256

7590

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EXAMINER

CHAWLA, JYOTI

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 06/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/641,410	O'DONNELL-KIELY, ALICE MARY	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jyoti Chawla	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 179-198 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 179-198 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

The response filed December 6, 2005 has been entered. Claims 179-198 remain pending. Claims 181, 184-189, 192, 194-196 and 198 have been amended.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 102***

Claims 179-182, 184-198 are rejected under 35 U.S.C. 102(b) as being anticipated by Musher (US 2217700).

Musher teaches ice cream (frozen comestible) on an edible support having at least two discernable (i.e. perceptible) edible members (Page 1: Column 1, lines 37-46 and Column 2 lines 40-55) also (Page 4: column 1, line 72 to Column 2, line 23), wherein one portion extends into the ice cream and one portion extends out of the ice cream for holding. Musher teaches stick, which may be completely edible (Page 5: Column 2, lines 46-56 and Page 6: Column 1, lines 35-47). The end of the stick may include a lollipop that is also connected structure pieces (Page 5: column 1, lines 26-33 and 54-65), which may include items such as nuts or even a plurality of candy pieces (page 3: Column 2, lines 14-21 and Page 5: Column 2, lines 24-35), and the lollipop and structure pieces i.e., before forming into a composite support (Page 4: column 1, line 72 to Column 2, line 23) may be coated in hard fat, which would prevent the transfer of moisture and improve the adhesion or grip of the frozen comestible (Page 3: Column 2

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lines Page 5: Column 1 , lines 65 to Column 2, line 2). Musher also teaches that the finished product or the support can be coated with chocolate or sprinkled with other flavoring material (Page 3: Column 2, lines 25-30). Musher further teaches that the structure pieces around the lollipop, which include candy, can be placed concentrically (i.e. a circle around the lollipop) to improve support ,or maneuvered in some other manner on the support (page 5: Column 1, lines 45-54 and Column 2, lines 24-35). Furthermore, Musher teaches a plurality of voids in the overall structure (i.e. note the spaces in Figure 6 between the structure pieces and lollipop ( Page 2: Column 2, lines 20-25; Page 3: Column 1 line 70-Column 2 line 5) Also see Page 6: Column 1, lines 4-70; Page 2, Column 2, line 4 to Page 3, Column 1, line 60 and figures 1-6)

### ***Claim Rejections - 35 USC § 103***

Claims 188 and 194 are rejected under 35 U.S.C. 103(a) as being unpatentable over Musher (US 2217700) as applied to claims 179-182,184-198 above, further in view of Firmin (US 1769215).

Musher teaches coating the support with a sugar or fat to make it moisture resistant and strong but is silent in specifically adding a protective inedible mess guard on the edible support (Page 2: column 1 , line 33 to Page 3: Column 2, line 58).

Firmin teaches a candy stick supporting a frozen comestible, that can be eaten with the frozen product or saved for later. The confection support taught by Firmin may be wrapped partially or entirely (element 14, figure 5, lines 63-70) or the support candy may be coated with an edible material like cocoa butter for added flavor or an inedible

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insoluble material like paraffin wax for increased moisture resistance, or the confection may be wrapped in its entirety, in a protective material like wax paper (i.e., inedible mess guard)(Page 1, lines 44-51, figure 1) for prolonging shelf life of the frozen confection as well as the edible support, (See lines 1-15,29-70). The candy support may be twisted or enlarged, particularly where it is inserted in the frozen confection to provide added texture and also form a more dependable support for the confection (See lines 52-56). Therefore, it would have been obvious to modify Musher, if necessary, and include an edible or inedible mess guard as taught by Firmin to help avoid a messy mass during the consumption of frozen confections on support members.

Claim 183 is rejected under 35 U.S.C. 103(a) as being unpatentable over Musher (US 2217700) as applied to claims 179-182,184-198 above, further in view of Michael Hood, (Seattle Weekly, July 1999).

Musher teaches ice cream on a support, but is silent in teaching the ice cream a second portion includes a plurality of handles for holding with two hands. Ice creams and popsickle4s with two handles , i.e., twin-pops , have been known in the art.

Michael hood, hereinafter Michael, teaches that pop sickles with two handles have been made in Seattle by a company called "Arctic Ice Cream". Kids can grip the two handles better than one and it can be safely divided into two (for portion control) without destroying the whole popsicle. Therefore, it would have been obvious to one with ordinary skill in the art at the time of invention to include a plurality of supports in the ice cream of Musher as taught by Michael because a two handle ice cream allows for a

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better grip (especially for children) of the frozen confection as it can be held with both hands. Two handles are also better for packing and shipping as they would potentially reduce the packing and shipping losses due to the fact that two supports would make the bond between the supports and the frozen confection stronger thus making it relatively less fragile.

### ***Response to Arguments***

Regarding applicant's arguments regarding 102(b) rejection as being anticipated by Musher, Please refer to the reasons stated in the office action mailed October 7, 2005 and the office action above.

Dictionary defines composite as "made up of distinct components", in light of the definition, Musher teaches the composite support (Page 1: Column 1, lines 37-46 and Column 2, lines 50-55) with two or more ingredients (Pages 1-3) and an additional coating as per applicant's claims 179 and 189.

In response to applicants argument on page 2-4 regarding the stick, the stick taught by Musher (page 5: Column 2 and Page 6: Column 1) is only a part of the entire support structure and the whole unit can be made and molded all together to make an edible support with or without the lollipop with discernible parts and coating and voids in one step process or as a multi step process (Page 4: Column 1, line 1 to Page 4: column 2, line 45). Since composite is a made up of distinct parts, which are separately whole or parts of other compositions, the support taught by Musher fits the definition.

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In response to applicants argument on pages 4-5 regarding the support, please refer to the office action above and Page 4 of Musher and Figures. As stated above regarding the stick, the stick is only part of the support structure taught by Musher.

Regarding applicant's argument on page 5, that Musher's support does not comprise two discernible members, please refer to the office action dated October 7, 2005 and above and Pages 1-6 of Musher and Figures 1-6. Musher teaches the support for ice cream that is made up of combination of cereals, flakes, shreds, hard candy pieces, ribbons of sugar, and crystallized sugar among a combination of shapes.

Regarding applicant's argument on page 6, "Musher's pieces are in the ice cream and not in the support", please refer to page 4 of Musher, where Musher teaches molding of stick and other flake material into a support structure for the frozen confection and forming the structure and coating it prior to addition of liquid and freezing steps.

Regarding applicant's argument on page 6, "Musher's voids are in the flakes structure not in the support", please refer to page 4 of Musher, where Musher teaches molding of stick and other flake material into a support structure for the frozen confection and forming the structure and coating it prior to addition of liquid and freezing steps. Thus making the support having the voids into which the ice cream material flows.

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Regarding the 103 (a) rejections of claims 183, 188 and 194 please refer to the above office action.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jyoti Chawla whose telephone number is (571) 272-8212. The examiner can normally be reached on 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jyoti Chawla  
Examiner  
Art Unit 1761  
5/30/06

  
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